



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Mr. Giovanni M. Ruscitti
Berg, Hill, Greenleaf, Ruscitti LLP
1712 Pearl Street
Boulder, Colorado 80302

RE: 9586 Property, 9586 I-25 Frontage Road, Longmont, CO 80504

Dear Mr. Ruscitti:

This letter is written in connection with a settlement agreement dated May 2, 2014, and approved by the court on May 22, 2014 (Settlement Agreement), as part of certain bankruptcy cases being jointly administered under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware under the title Abound Solar Manufacturing, LLC, Case No. 12-11974 (PJW) (Cases). The parties to the settlement agreement are: 9586 LLC (Owner), owner of the 9586 property located at 9586 I-25 Frontage Road, Longmont, CO 80504 (9586 Property); 9536 LLC, an affiliate of Owner and, until April 13, 2013, owner of a property adjacent to the 9586 property (9536 LLC); Jeoffrey L. Burtch, in his capacity as the Chapter 7 Trustee of the debtors in the Cases (Trustee); Chubb Custom Insurance Company (Chubb); and the United States acting on behalf of the United States Department of Energy (DOE) (together, "Parties").

The Environmental Protection Agency Region 8 (EPA) understands that on the effective date of the Settlement Agreement (as defined therein), the Settlement Agreement will resolve a number of disputes among the Parties, many of which relate to the funding of clean-up work to address contamination remaining at, and from, the 9586 Property after initial clean-up activities conducted by the Trustee during the bankruptcy proceedings (Clean-up Disputes). We also understand that the Parties have agreed that a condition precedent to the Settlement Agreement becoming effective is the issuance by the EPA of a "comfort letter" (as defined in the Settlement Agreement) relating to the 9586 Property. The EPA also understands that this condition precedent, and any of the other conditions, may be waived by the Parties.

As the EPA is not a party to the Settlement Agreement, the EPA is not bound by its terms. Also, this circumstance does not fit the traditional fact patterns under which the EPA might consider issuing a comfort or status letter.

Nevertheless, in an effort to assist the Parties in their efforts to effectuate a settlement that, if effective, appears significantly more likely to result in a rapid resumption of clean-up activities (and so a more rapid resumption of productive use of the 9586 Property) than continuation of the litigation of, among other things, the Clean-up Disputes, we will explain our understanding of the present circumstances.

Abound Solar Manufacturing, LLC (Abound) apparently leased the 9586 Property from Owner's predecessor pursuant to a lease agreement dated March 18, 2008, and amended in December 2010. Abound manufactured solar panels on the 9586 Property using, among other things, cadmium, a toxic and hazardous material.

Prior to filing for Chapter 7 bankruptcy on July 12, 2012, Abound ceased manufacturing operations, leaving manufacturing and office equipment, supplies, and other items related to Abound's operations on or about the 9586 Property. Abound also left solar panels and other equipment on the 9536 Property.

The DOE is the senior secured creditor in the Cases due to a series of financing agreements, pursuant to which the DOE issued debtors a \$400 million line of credit. Pursuant to these agreements, the DOE was granted a security interest and first priority lien on all assets of the Debtors in return for its guaranty of loans issued to the Debtors through the Federal Financing Bank.

On January 3, 2013, the Colorado Department of Public Health and Environment (CDPHE) issued a Compliance Advisory to the Trustee and Abound, notifying the Trustee of the unlawful storage of hazardous waste on the 9586 Property and of the requirement to remove the hazardous waste (Trustee's Compliance Advisory).

On January 14, 2013, the United States, on behalf of the EPA, filed a protective proof of claim to ensure that the rights of the United States with respect to certain mandatory regulatory obligations of the debtors in the cases, including the obligation to clean up the 9586 Property, remained fully protected.

Between January 3, 2013, and September 19, 2013, and with the permission of the DOE, the Trustee paid for the removal and disposal of some of the hazardous waste at the 9586 Property, apparently in compliance with the Trustee's Compliance Advisory.

In October and November 2013, Owner published a request for proposals to fully remediate the 9586 Property. Bids received by Owner apparently indicate that the currently estimated costs to remediate the 9586 Property total approximately \$5.8 million.

On November 13, 2013, CDPHE issued a compliance advisory to Owner which requires Owner to provide information and dispose of additional hazardous wastes stored at the 9586 Property (Owner's Compliance Advisory).

On January 28, 2014, CDPHE issued a compliance order to Abound and the Trustee (Compliance Order), finding that Abound has violated or is in violation of certain provisions of Colorado Hazardous Waste Regulations and ordering the Trustee to, among other things, submit for CDPHE approval a Waste Management and Building Decontamination Plan (Clean-up Plan), and to implement the Clean-up Plan upon approval.

During the pendency of the Cases, the Parties have negotiated extensively in an effort to settle both Pending and Threatened Claims as those terms are defined in the Settlement Agreement (which claims include, but are not limited to the Clean-up Disputes). The Settlement Agreement purports to settle all Pending and Threatened Claims, including all Clean-up Disputes.

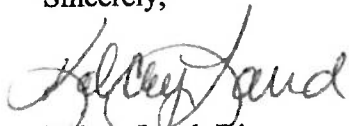
The EPA has taken particular note of the following terms of the Settlement Agreement relating to future clean-up of the 9586 Property. At the closing, a total of \$4,370,000.00 will be transferred to Owner for the express and sole purpose of conducting clean-up activities at the 9586 Property (Clean-up Funds). The Clean-up Funds will be deposited directly into Counsel for the Owner's Colorado Lawyer Trust Account Foundation (COLTAF) account. Funds will be disbursed from the COLTAF account only to pay invoices certified by both Owner and its environmental consultant, to be directly for clean-up activities, until either CDPHE has certified that clean-up is complete, or the Clean-up Funds have been exhausted.

Owner has assumed Trustee's responsibilities under the Compliance Order, including to develop and submit the Clean-up Plan for CDPHE approval and to timely implement the Plan after approval. Further, as among the Parties, Owner has agreed to be fully and solely liable for all future Response Costs (as defined in the Settlement Agreement, and which include, but are not limited to, implementation of the Clean-up Plan) at the 9586 Property, even if such costs exceed the \$4,370,000 to be received at closing. In connection with our acknowledgment of this contractual arrangement, the EPA notes that this private party agreement does not alter or affect the federal statutory liability, if any, of any of the Parties.

CDPHE is the day-to-day lead for implementing the federal hazardous waste program in Colorado. The EPA expects that CDPHE will successfully resolve current environmental issues associated with the 9586 Property. Thus, based on the information currently in our possession and on our belief that our understanding of these highly unusual site-specific circumstances, as described in part above, is accurate, the EPA currently does not have plans to pursue any further action at the 9586 Property. Please note, however, that this does not preclude the EPA from undertaking action under RCRA or other statutes administered by the EPA at the 9586 Property at a later date if the EPA learns of changes to these site-specific circumstances, or if clean-up is not completed in a timely manner.

Please feel free to contact Mr. Charles (Chuck) Figur, Senior Enforcement Attorney with any questions you may have regarding this letter. Mr. Figur can be reached at (303) 312 6915, or at figur.charles@epa.gov.

Sincerely,



Kelcey Land, Director
RCRA/CERCLA Technical Enforcement Program

Copy: Randy Lamdin, ENF-RC
Aaron Urdiales, ENF-RC
Chuck Figur, ENF-L